

DEPARTMENT OF FOOD AND AGRICULTURE

PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations

Article 3 and Sections 3651(c)(1), 3655(c)(1), 3658 and 3662

Pierce's Disease Control Program

INITIAL STATEMENT OF REASONS/

POLICY STATEMENT OVERVIEW

Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address

This regulation is intended to address the obligations of the California Department of Food and Agriculture to protect the agricultural industry of California and prevent the introduction and spread of injurious plant pests.

Specific Purpose and Factual Basis

The specific purpose of Article 3 and Sections 3651(c)(1), 3655(c)(1), 3658 and 3662 is to provide authority for the State to minimize the destructive impact of Pierce's disease and its vectors at the earliest possible time on the agricultural industry, by establishing provisions for the program to arrest the artificial spread of the disease and its vector, the glassy-winged sharpshooter (GWSS), *Homalodisca coagulata*, to additional areas; thereby protecting California's agricultural industry.

The factual basis for the determination by the Department that the amendments of Article 3 and Sections 3651(c)(1), 3655(c)(1), 3658 and 3662 are necessary is as follows:

The Legislature has found and declared that Pierce's disease and its vectors present a clear and present danger to the State's grape industry, other agricultural commodities and plant life, and enacted urgency legislation mandating immediate action to minimize the destructive impact of Pierce's disease and its vectors at the earliest possible time. In addition, the Governor recognized the immediate threat posed by the GWSS, in requesting that the United States Department of Agriculture declare a state of emergency under federal law. The federal declaration of emergency was published in the Federal Register on July 7, 2000,

with an effective date of June 23, 2000.

The Department of Food and Agriculture adopted these regulations to further its implementation of a Statewide Program and Rapid Response Plan to arrest the spread of, and eradicate GWSS (where feasible), upon its detection in additional areas. The adoption of these regulations and implementation of a Statewide Program and Rapid Response Plan have been necessary actions to carry out the Legislature's purpose to control Pierce's disease and to mitigate the effects of the ongoing spread of the GWSS.

Several other leafhoppers and plant feeding insects are known to vector Pierce's disease, but have not resulted in transmission of the disease at levels of serious economic significance. The GWSS is not a native insect pest in California and its introduction to this State is relatively recent. It was first observed in California in 1990. The GWSS is an especially strong and aggressive flier, capable of spreading Pierce's disease over larger areas than other vectors of the disease. It is also a voracious feeder that moves rapidly from one host plant to another in search of food. The pest is also prolific and lays its eggs on over a hundred different species of plants.

Besides natural migration, the GWSS is spread artificially as host plants, carriers, and nursery stock are transported into and around the State; this transportation facilitates movement of the GWSS over many miles and into previously non-infested regions. In addition to commercial crops, non-commercially produced plants including houseplants, fruit trees, ornamental plants, weeds, and native plants can host the GWSS.

The GWSS vectors the bacterium, *Xylella fastidiosa*, that causes Pierce's disease. This microorganism frequently kills grapevines and can severely impact other crops, including citrus, almonds, peaches and nectarines. In the 1890s, Pierce's disease destroyed the grape industry in Southern California. There is no treatment known to be effective against Pierce's disease. Furthermore, although the current threat posed by the GWSS is the spread of Pierce's disease, the pest can also vector citrus variegated chlorosis disease that is not known to occur in the United States. However, if the GWSS becomes widespread and citrus variegated chlorosis disease is introduced into this State, the State's citrus industry would suffer very significant losses.

In order to achieve the legislative intent, it is necessary for the Pierce's Disease Control Program and the affected industries to have adequate regulatory flexibility to ensure any new scientific discoveries, or more effective vector control methods, or survey methods, etc., may be operationally incorporated into the program. This will help ensure the program is not overly regulatory burdensome or costly for an affected party to be able to comply with the regulations. To achieve this flexibility, the text uses the phrase such as "in a manner approved by the Department" and this phrase is associated with a performance standard. In the standards for movement of bulk citrus (Section 3662), performance standards are used rather than prescriptive standards. These performance standards include phrases such as, "the bulk citrus have originated from a non-infested grove as determined by surveys, including trapping and visual, approved by the Department to detect the presence of vectors" and "processed or treated in a manner approved by the Department to eliminate the vectors," "the bulk citrus has been harvested, handled, or treated in a manner approved by the Department to eliminate all live vectors." These performance standards help ensure that the affected parties have multiple methods for achieving compliance with the regulations and are able to use the method that best suits their particular need. These performance standards allow any method or manner to be used to achieve the standard and do not preclude use of alternatives to those that have been developed/established by the Department.

Section 3662 establishes the specific standards for movement of bulk citrus from infested areas to a non-infested area or an area in which an active control program is being conducted. This section also provides that if the regulation is not otherwise amended, effective October 1, 2003, the language will become less specific to provide for general performance-based standards and provide that bulk citrus shall be harvested, handled, or treated in a manner approved by the Department to eliminate all live vectors or that bulk citrus shall originate from a non-infested grove as determined by surveys, including trapping and visual, approved by the Department to detect the presence of vectors and the citrus fruit are monitored during harvest. This provision for a language change was requested by the citrus industry to ensure that the Department reevaluated the specific provisions and to provide for elimination of the specific provisions should they have been shown to be ineffective. The Department has reevaluated the specific provisions, and to date, these provisions have been effective.

During the 2001-02 (October 2001 – September 2002) shipping season, there were 170 shipments of bulk citrus found contaminated with live GWSS out of approximately 15,000 inspected (yellow tag) shipments. Through July 9, 2003 of the 2002-03 (October 2002 – September 2003) shipping season, there have been 26 bulk citrus shipments found contaminated with live GWSS out of approximately 21,000 inspected (yellow tag) shipments. The greater number of yellow tag shipments in 2002-03 is due to an increase in the size of the GWSS infested areas. If the number of contaminated shipments doubled by the end of the season, which seems unlikely, this would still represent an almost seventy percent (70%) reduction in the number of contaminated shipments over the previous season. Therefore, it is essential that the program have available the authority of specific regulations to continue to be most effective. The regulations provide authority for enforcing specific standards at both origin and destination to more effectively contain the GWSS to existing infested areas.

The proposed amendments of Article 3 and Sections 3651(c)(1) and 3655(c)(1) are changes without regulatory effect, correcting typographical errors contained in the text.

Section 3658 establishes the list of plants that shall meet the requirements of standards for movement (Section 3659) and certification (Section 3660). The Department proposes to amend Section 3658 to add six new hosts: *Caryota* spp. (fishtail palm), *Cercidium* spp. (palo verde), *Chionanthus* spp. (fringe tree), *Leucospermum* spp. (pincushion), *Sarcococca* spp. (sweet box) and *Schlumbergera* spp. (Christmas cactus). The effect of this proposed amendment is to provide authority for the State to specifically regulate the movement of these new hosts.

Section 3662 establishes the standards for movement of bulk citrus. The Department proposes to amend Section 3662 to remove the sunset clause that would become effective October 1, 2003. The effect of this amendment is to retain the current specific standards for movement of bulk citrus to ensure that the shippers of bulk citrus can easily understand the requirements necessary to comply with the regulations to prevent the spread of the GWSS.

### Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities

The Department of Food and Agriculture has determined that Sections 3658 and 3662 do impose a mandate on the local agencies, but not on school districts. Reimbursement will be made for costs resulting from this mandate from the Pierce's Disease Management Account established by the Legislature to combat Pierce's disease and its vectors. The Legislature authorized these funds to be allocated to those local public entities that develop Pierce's disease work plans that conform to statutory standards and are approved by the Department of Food and Agriculture. By adopting these regulations on an emergency basis, the Department will be prescribing the standards for local Pierce's Disease Control Programs and can allocate these funds to local public entities with conforming work plans.

The Department has also determined that the amended regulations will involve no additional costs or savings to any state agency because funds for state costs are already appropriated, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable savings to local agencies or costs or savings to school districts under Section 17561 of the Government Code, funds for reimbursement for costs to local agencies have already been appropriated, and will be allocated under the approved work plans, and no costs or savings in federal funding to the State. To the extent that local agencies incur costs as a result of their enforcement of and compliance with these regulations, the local agencies may recover those costs by establishing an acceptable Pierce's disease work plan that qualifies for allocation of funds appropriated by the Legislature for this purpose.

The Department has determined that the proposed action will not have a significant adverse economic impact on housing costs. The Department of Food and Agriculture finds that the adoption of these regulations may have an adverse economic impact on some California businesses, including the ability of California businesses to compete with businesses in other states. The economic impact on those California businesses is not expected to be significantly adverse when balanced against the protection provided to those businesses from costs or losses due to Pierce's disease or the GWSS.

The types of businesses that may be impacted are nursery stock producers, nurseries and landscapers; and

citrus growers, and citrus receivers (processors and packing facilities). The regulations include performance standards, rather than prescriptive standards, for achieving compliance. This provides affected parties the greatest flexibility and with many potential options to achieve compliance.

The Department has identified approximately 168 production nurseries in the GWSS-infested areas that must comply with these regulations. Costs for these nurseries include those for additional treatments and labor costs for inspections, trapping, and special handling of these new host plants. These costs are extremely varied based on the type of plants produced at each nursery, the size of nursery, the nursery's location with regard to the GWSS's highly populated areas, and existing pest control programs.

The average annual estimated costs for all production nurseries located within the GWSS-infested area are \$5,952.

Approximately 2,334 citrus growers/shippers have been identified as located within the GWSS- infested areas and producing citrus for fresh market or processing. Many of these growers/shippers will have to treat their groves or mechanically brush the bulk citrus prior to shipping to a packing or processing facility. Additionally, some bulk citrus shipments may be rejected at destination due to live life stages of GWSS being detected and as a result, returned to the grower/shipper. The average annual combined costs for treatment, mechanical brushing and handling rejected bulk citrus shipments to an individual representative grower/shipper are estimated to be \$1,418. Additionally, receivers may have GWSS contaminated bulk citrus shipments delivered to their facility and be required to store the bulk citrus in a "sweat room" to eliminate any live life stages. The Department identified approximately 97 receivers of bulk citrus from GWSS infested areas. The average annual cost to a receiver is estimated to be \$6,371.

The value of California nursery products is approximately \$2.7 billion per year. The value of California citrus products is approximately \$1.3 billion per year.

Based on the above information, it was determined that the amendment of Sections 3658 and 3662 may

have an adverse economic impact on businesses, but it is not expected to be significantly adverse. For many businesses, no additional costs will be incurred.

#### Assessment

The Department has made an assessment that this amendment to the regulations would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

#### Alternatives Considered

The Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

#### Information Relied Upon

The Department relied upon the following studies, reports, and documents in the adoption of Sections 3658 and 3662:

Estimated Annual Economic Impact of Pierce's Disease Control Program, California Department of Food and Agriculture, Permits and Regulations; July 11, 2003.

Estimated Annual Pierce's Disease Control Program Cost Basis, California Department of Food and Agriculture, Permits and Regulations; July 11, 2003.

E-mail of July 11, 2003 to Stephen Brown from Roger Spencer and its attachment, "Pierce's Disease Program, Emergency Regulations, Estimated Costs to Citrus Industry."

E-mail of July 10, 2003 to Stephen Brown from Roger Spencer.

E-mail of July 10, 2003 to Roger Spencer from Pat Thalken and its attachment, "Comparison of GWSS rejected bulk citrus shipments in shipping seasons 2001-02 and 2002-03."

E-mail of July 10, 2003 to Roger Spencer from Amadou Ba and attached Pest and Damage Records #1254352 (October 11, 2002); #112460 (December 3, 2002); #1283011 (February 27, 2003), #1270950 (April 30, 2003), #1404602 (May 18, 2003) and #1404606 (May 21, 2003)

California Department of Food and Agriculture.

E-mail of July 9, 2003 to Stephen Brown from Roger Spencer.